

EXHIBIT 36

Chesser, Paul - Vol. II

October 28, 2008

Washington, DC

313

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY : MDL NO. 1456

AVERAGE WHOLESALE PRICE LITIGATION : CIVIL ACTION

THIS DOCUMENT RELATES TO: : 01-CV-12257-PBS

United States of America ex rel. :

Ven-a-Care of the Florida Keys, :

Inc., v. Boehringer Ingelheim :

Corp., et al., Civil Action No. :

07-10248-PBS and United States of :

America, ex rel. Ven-A-Care of the : Hon. Patti B.

Florida Keys, Inc., v. Abbott : Saris

Laboratories, Inc., Civil Action :

Nos. 06-11337-PBS and :

07-CV-11618-PBS :

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(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

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VOLUME II

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1 **A. Correct.**

2 Q. And this is the reason you provided the
3 similar stratification for the 1994 audit, correct?

4 **A. Yes.**

5 Q. And you continued to stratify based on
6 this for this 1999 audit, is that right?

7 **A. Yes.**

8 Q. Now, last time you indicated -- let's step
9 back. How -- when you received invoices from the
10 pharmacies that were ultimately selected, how did you
11 determine which drugs you would look at on those
12 invoices?

13 **A. We looked at every drug.**

14 Q. And every drug from those invoices that
15 you happen to receive would be included in the
16 analysis for the discount of AWP, correct?

17 **A. Yes. Unless we at some point were unable
18 to identify an AWP.**

19 Q. And where did you acquire those AWP's?

20 **A. The State of Florida provided us with the
21 price -- I think they contracted with First DataBank.**

22 Q. So was this a computer program or was this

1 a book?

2 **A. It was an Access database file.**

3 Q. So this Access database file from First
4 DataBank, if you could find an AWP in that file that
5 corresponded to the line item on an invoice, you
6 would consider that or you would incorporate that
7 drug or that invoice into the study, correct?

8 **A. Yes.**

9 Q. Is it accurate that you didn't exclude any
10 particular types of drugs from the analysis that you
11 were performing?

12 **A. We didn't include any over the counter
13 products.**

14 Q. But if it was a legend drug or a
15 prescription drug, you would have included that in
16 this study, correct?

17 **A. And we had a price for it.**

18 Q. And if you had an AWP price for it,
19 correct?

20 **A. Correct.**

21 Q. And is it also accurate that you didn't
22 exclude any manufacturer's drugs in particular from

1 your analysis as long as you could find an AWP for
2 that drug, is that correct?

3 A. That's correct.

4 Q. Other than that First DataBank file, did
5 you look at any other sources for AWP?

6 A. I want to say we -- we had purchased some
7 Red Books, so we might have -- if we didn't find
8 something in First DataBank, we might have gone to
9 the Red Book. We used the Red Book a lot. If we had
10 questions about any cities as another reference
11 source.

12 Q. So if I understand, to sum up everything
13 that you said, if you received an invoice from a
14 pharmacy provider, and it listed a number of drug
15 items that they purchased, as long as you could find
16 an AWP either from a First DataBank source from
17 Florida or a Red Book, you would include that
18 particular line item in your analysis for this
19 report, is that correct?

20 A. Correct.

21 Q. Now, it indicates later on in this third
22 paragraph of the scope section that you sampled the

1 nontraditional category of pharmacies, but excluded
2 them from the estimates, is that right?

3 **A. Yes.**

4 Q. Now, this nontraditional category would
5 include home health providers, is that correct?

6 **A. Yes.**

7 Q. And nursing homes, is that right?

8 **A. Yes.**

9 Q. And is it accurate that you excluded this
10 particular category based on input you received from
11 the states for the 1994 audit, is that right?

12 **A. That's correct.**

13 Q. Because they indicated to you that
14 nontraditional pharmacies could obtain prescription
15 drugs at greater discounts from AWP than normal
16 pharmacies, is that right?

17 **A. Yes.**

18 Q. Now let's flip to the second page of this.
19 And in particular, I'm going to jump down to the
20 paragraph that starts with, since some states. Do
21 you see that?

22 **A. Yes.**

1 Q. Okay. It says, "since some states also
2 use wholesaler's acquisition costs in their
3 reimbursement methodology, we also compared the
4 invoice drug price to WAC for each drug for which WAC
5 was available on the pricing file." Now, you're
6 referencing the Florida pricing file, is that right?

7 A. Yes.

8 Q. Now, if I recall from the 1994 audit, you
9 did not look at WAC pricing, is that right?

10 A. That's correct.

11 Q. Why did you examine WACs in this
12 particular audit?

13 A. You know, I don't know if I know exactly.
14 It may have been because they were available on that
15 First DataBank file. And since they were there, we
16 thought we might as well, or it may have been because
17 more states were using WAC. I don't recall exactly.

18 Q. Who made that decision?

19 A. It would have been Bill Shrigley and Ben
20 Jackson and Gordon Sato and myself.

21 Q. Did any state that used WAC request that
22 you look at WAC pricing for the purposes of this

1 audit?

2 **A. I don't recall that they did.**

3 Q. Okay. Now let's move to the findings at
4 the bottom of this page. It indicates, "we estimated
5 that the invoice price for generic drugs was a
6 national average of 65.93 percent below AWP." Do you
7 see that ?

8 **A. Yes.**

9 Q. Now, the 1994 audit revealed an average
10 discount of 42.5 percent, is that right, for generic
11 drugs?

12 **A. Yes.**

13 Q. Now, this audit found an even greater
14 discrepancy between AWP and invoice prices, is that
15 right?

16 **A. Yes.**

17 Q. Now, so I understand this figure, we are
18 talking about the discount from AWP to get down to
19 the invoice price, is that right?

20 **A. Yes.**

21 Q. How -- what percentage of the AWP you
22 would have to subtract from that figure to get to an

1 Q. Now, as the study went forward, by the
2 nature of the methodology that you used, there were
3 in each state, 60 pharmacies that became aware of the
4 study that OIG was doing, correct?

5 A. Yes.

6 Q. You indicated in your first day of
7 deposition that you received lots of calls from these
8 pharmacies, do you recall that?

9 A. Sure.

10 Q. Your name was in the letter, and your
11 telephone number, as I recall, that went to these
12 pharmacies, right?

13 A. Correct.

14 Q. When you spoke to these pharmacies, do you
15 have any recollection of specific conversations that
16 you had with any of these pharmacies?

17 A. I don't know that I remember specific
18 conversations. I do remember that -- a lot of
19 questions related to do we have to do this.

20 Q. What was your answer to those who asked
21 whether you had to do this?

22 A. I always told them we believed that they

1 **did.**

2 Q. Do you recall any other topics that were
3 discussed in these -- in these conversations?

4 MR. DRAYCOTT: Objection.

5 THE WITNESS: No. Not specifically.

6 BY MR. COOK:

7 Q. Did any of the pharmacies ask you what it
8 was that OIG was doing?

9 A. I don't recall that being -- I mean, my
10 recollection of the letter was pretty explanatory
11 when it came to the purpose of this.

12 Q. If any of the pharmacies had asked you for
13 additional detail about what it is that you were
14 looking into, is that something that you would have
15 been free to share with the pharmacies?

16 MR. DRAYCOTT: Objection.

17 THE WITNESS: Sure.

18 BY MR. COOK:

19 Q. I mean, there is nothing secret about the
20 fact that you were comparing average whole sale
21 prices to pharmacy acquisition costs, right?

22 A. Correct.